

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**JEROME WILLIAMS, LINDA
WILLIAMS, and CLAUDE WILLIAMS,
Individually and on behalf of all similarly
situated individuals,**

Plaintiffs,

vs.

HOMEOWNERS LOAN CORP., et al.

Defendants.

**CIVIL ACTION NO.
06-0799-B**

**HOMEOWNERS LOAN CORP.'S MOTION FOR
SUMMARY JUDGMENT OR, ALTERNATIVELY,
MOTION TO ALTER THE STATUTORY RESCISSION PROCESS**

Defendant, **HOMEOWNERS LOAN CORP.** (hereinafter "HLC"), pursuant to Fed. R. Civ. P. 56, files this Motion for Summary Judgment or, Alternatively, Motion to Alter the Rescission Process and respectfully moves this Court as follows:

1. The statutory rescission process for consumer credit transactions is governed by 15 U.S.C. § 1635 and Regulation Z, 12 C.F.R. § 226.23(d).

2. Plaintiffs' Truth in Lending Act ("TILA") and the Home Ownership and Equity Protection Act ("HOEPA") claims have been dismissed as time barred,

which leaves only Plaintiffs' rescission claim pursuant to 15 U.S.C. § 1635(b) against HLC.

3. Generally, when rescission is appropriate, § 1635 requires the lender to return to the borrower all payments made on the loan by the borrower and also requires the lender to terminate its security interest in the home. The borrower is then required to return the loan proceeds to the lender.

4. This Court has the power to require Plaintiffs to affirmatively show an ability to tender the necessary rescission amounts should they succeed on their rescission claim against HLC. Should Plaintiffs fail, the Court can dismiss their rescission claim.

5. The Court also has the discretion to condition HLC's return of all payments made by the Plaintiffs and the termination of the security interest upon the Plaintiffs initially or simultaneously providing HLC with the loan proceeds.

6. HLC, therefore, requests that this Court grant its Motion for Summary Judgment and require Plaintiffs, within thirty (30) days, to provide definitive evidence of their ability to tender the necessary rescission amounts should they prevail on their rescission claim. In the event Plaintiffs fail to make an adequate showing, HLC requests that their rescission claim be dismissed with prejudice.

7. Alternatively, should Plaintiffs demonstrate an ability to make full rescission payment, HLC requests that the Court enter an Order modifying the

normal statutory rescission provisions to require either (1) that the Plaintiffs provide HLC with the loan proceeds, prior to the termination of the security interest and to HLC's returning all payments made on the loan to Plaintiffs or (2) that there be a simultaneous exchange of the funds between the parties.

In support hereof, HLC relies upon the following:

- The pleadings submitted in the matter; and
- The Memorandum of Law In Support of HLC's Motion for Summary Judgment, including its attachments.

ORAL ARGUMENT REQUESTED

DATED: October 31, 2007

Respectfully submitted,

/s/ John P. Scott, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of October, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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